IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11266 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHASKARBHAI SHANTILAL DESAI

Versus

DISTRICT MAGISTRATE

Appearance:

MR NIRAV C THAKKAR for Petitioner

Mr.H.L. Jani, A.G.P. for Respondent No. 1,2 & 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/11/2000

ORAL JUDGMENT

The petitioner has challenged the detention order dated 17-7-2000 passed by the District Magistrate, Valsad in exercise of powers conferred under Section 3(2) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("Act" for short).

The grounds of detention dated 17-7-2000 were supplied to the detenu on the same day, copy of which is produced at Annexure "B". The perusal of the grounds suggest that petitioner as an industrial unit had obtained a quota of high speed diesel and acquired 1,20,000 litres of high speed diesel against "C" form in the month of August, 1999. That on cross checking by the authority on 17-6-2000 and 20-6-2000, it was found that the petitioner acquired aforesaid quota of 1,20,000 litres of high speed diesel but instead of using the same for its own unit has disposed of the same at market rate clandestinely. That the petitioner having obtained the said quota at a subsidised rate and having disposed of the same contrary to the conditions, has made profit and thus is guilty of offences under the provisions of Essential Commodities Act, 1955.

That the detaining authority in consideration of the fact collected during the inquiry came to the subjective satisfaction that in order to prevent the petitioner from indulging into prejudicial activity, it is necessary to detain the petitioner by exercising powers under Sec.3(2) of the Act, and hence, the impugned order.

The petitioner initially challenged the impugned order by filing Spl.C.A. no.8564/2000 but withdrew without obtaining any order so as to enable the petitioner to approach the Supreme Court. That thereafter, the petitioner filed writ petition (Criminal) 269 of 2000 in the Supreme Court of India. However, during the submissions for admission, the petitioner requested permission to withdraw the petition so as to enable the petitioner to appraoch the High Court. That vide order dated 20th October, 2000, the Supreme Court granted permission to withdraw the petition so as to enable the petitioner to approach the High Court to challenge the said order but extended the period of parole granted by the State Government to the petitioner for a period of four weeks. Thereafter, the petitioner has filed the present petition and has raised numerous contentions to invalidate the impugned order.

Learned Advocate for the petitioner has submitted that after the order of detention and execution of the same, the petitioner made representation dated 20-7-2000 to the State Government. However, the said representation was not decided expeditiously which has affected the fundamental right of the petitioner and has violated the constitutional mandate under Articel 22(5) of the

Constitution, and as such, the order is bad in law.

To support the submission, reliance is placed on the matter of RAJAMMAL V. STATE OF TAMIL NADU & ANR., AIR 1999 SC 684. To rebut the contention, learned AGP Mr. H.L. Jani referred to and relied on the affidavit filed by Deputy Secretary, Government of Gujarat, Food and Civil Supplies Department dated 8-11-2000. Mr. Jani referred to the statement made by the deponent in paragraph 2 and contended that representation of the present petitioner dated 20-7-2000 was forwarded by the jail authority to the State of Gujarat, Food, Civil Supplies and Consumer Affairs Department on dated 22-7-2000 and was received by the State of Gujarat, Food Civil Supplies and Consumer Aaffairs Department on 25-7-2000. That parawise remark was prepared on 27-7-2000 and was placed before the Section Officer. That the file was cleared by the Under Secretary and Deputy Secretary on 27-7-2000 and thereafter file was placed before the Secretary, Food Civil Supplies and Consumer Affairs Department. The Secretary cleared the said file on 28-7-2000 and the file was sent to the Hon'ble Minister of Civil Supplies for appropriate orders. That the file was cleared by the Hon'ble Minister of Civil Supplies on 31-7-2000 whereby the representation was rejected. That 30-7-2000 being a holiday (Sunday) intimation was given to the Special Branch on 1-8-2000 and thereafter the detenu was intimated.

On the basis of the said synopsis, the learned Asstt. Govt. Pleader submitted that alleged delay in consideration of the representation being a short delay, it cannot be termed as a delay which hampered the constitutional mandate under Article 22(5) and the impugned order cannot be invalidated on the said ground. To support the said contention, Shri Jani has referred to and relied on the observations made by the Supreme Court in the matter of SMT. KAMLABAI VS. COMMISSIONER OF POLICE, NAGPUR & ORS., reported vide JT 1993(3) SC Page 666 at paragraphs 3 and 4 of the judgment.

It may be noted that in the above stated authority the Apex Court has observed that the delay by itselt is not a ground which proves to be fatal if there is an explanation, however, the short delay cannot be given undue importance having regard to the administrative actions. In the instant case, the explanation tendered on record by the affidavit of Deputy Secretary cannot be said to be a sufficient explanation as to why the representation could not be cleared by the

Minister for Food, Civil Supplies and Consumer Affairs Department when it was submitted to him on 28-7-2000 till 31-7-2000. The affidavit does not disclose any explanation, and as such, even if the duration of delay is of 3 days only , if it is not explained, it would be fatal.

It is pertinent to note that in a subsequent judgment rendered in the matter of RAJAMMAL V. STATE OF TAMIL NADU AND ANR. reported vide AIR 1999 SC 684, the Supreme Court has observed as under:

".....the test is not the duration or range of delay, but how it is explained by the authority concerned.....The Minister passed the order after five days and there was no explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only after five days is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promtitude in cases involving the vitally important fundamental right of a citizen....."

In the instant case, it appears from the affidavit filed by the Under Secretary that though the file was placed before the concerned Minister on 28-7-2000, it was not cleared before 31-7-2000 (30-7-2000 being Sunday - a holiday) cannot be a ground to explain the delay so far as consideration of representation by the Minister is concerned. That being so, in the facts and circumstances of the present case, I am constrained to hold that the respondent-State has failed to explain the delay for non consideration of the representation of the petitioner satisfactorily, which has violated the mandate under Article 22(5) of the Constitution and has rendered the impugned order of detention invalid.

As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other grounds raised in the petition and canvassed at the Bar.

On the basis of the foregoing discussion, the petition is allowed. The impugned order of detention dated 17-7-2000 passed by the District Magistrate, Valsad against the petitioner is hereby quashed and set aside. The petitioner-detenu-Bhaskarbhai Shantilal Desai is ordered to be set at liberty forthwith, if not required

in any other case.. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

stanley-akt.